

EXHIBIT 20

**Redacted Version of
Document Sought to
be Sealed**

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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CHASOM BROWN; MARIA NGUYEN; WILLIAM
BYATT; JEREMY DAVIS; and CHRISTOPHER
CASTILLO, individually and on behalf
of all other similarly situated,

Plaintiffs,

No. 5:20-cv-03664-LHK

-against-

GOOGLE LLC,

Defendant.

- - - - - x

Zoom video conference deposition of
RORY McCLELLAND, taken pursuant to
notice, was held remotely, commencing
February 18, 2022, 5:30 a.m. Eastern
Standard Time, before Leslie Fagin, a
Stenographic Court Reporter and Notary
Public in the State of New York.

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Page 2

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A P P E A R A N C E S:

(All Parties Present Via Zoom.)

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For the Calhoun Plaintiffs

VANESSA WHEELER, Exhibit Tech

Magna Legal Services

1 R. McClelland

2 R O R Y M c C L E L L A N D, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and testified
5 as follows:

6 MS. BAEZA: Good morning this is
7 Rosanna Baeza on behalf of plaintiffs
8 and with me is Mark Mao, also from Boies
9 Schiller Flexner.

10 MS. WEAVER: Good morning. Lesley
11 Weaver, Bleichmar Fonti on behalf of the
12 Calhoun plaintiffs.

13 MS. CRAWFORD: Jomaire Crawford
14 from Quinn Emanuel Urquhart for the
15 defendant, Google LLC. I am joined this
16 morning by my colleague, Carl Spilly.

17 MR. BAILEY: I'm Ben Baily with
18 Bailey Glasser and my colleague, Elliott
19 McGraw is on. We represent the witness.

20 Even if one steps out, there will
21 always be one of us here.

22 EXAMINATION BY

23 MS. BAEZA:

24 Q. Good morning. My name is Rosanna
25 Baeza and I represent the plaintiffs in this

1 R. McClelland

2 Q. So that would be a device-specific
3 protection?

4 A. Exactly, local and device are
5 synonymous here.

6 Q. Can you walk me through the next
7 icon where we have a cross and it says
8 network?

9 A. Certainly. The network refers to
10 the mechanism through which the request from
11 the browser, request, meaning, when you type
12 a URL in and press the enter button, a
13 request is routed through the internet to the
14 correct web server.

15 That routing requires third parties
16 to successfully reach the right destination
17 and then the web server responds with what is
18 technically referred to as a response. That
19 response contains the website that you had
20 requested.

21 The input then gets routed back
22 through the internet to your client device,
23 so that you can view the websites on your
24 browser.

25 Intermediaries typically are your

1 R. McClelland
2 router, your ISP, potentially an authority,
3 like a school or an employer. There then
4 typically are government entities involved,
5 as well, and various backbone-type internet
6 providers that provide and facilitate the
7 working of the internet as a whole and that
8 covers that middle section.

9 Q. Can you walk me through the third
10 icon that says Google?

11 A. Certainly. So Google, amongst
12 other website and web applications, are web
13 servers available for users to access using
14 their browsers.

15 Google is one of many Incognito
16 mode doesn't differentiate between Google and
17 third parties.

18 One of the promises that Incognito
19 mode makes the user is that the web server is
20 unaware of your Incognito intent, so,
21 therefore, by extension, Google and third
22 parties cannot be aware of the fact that you
23 are in Incognito mode and cannot change their
24 behavior accordingly.

25 Q. What do you mean by, you are not

1 R. McClelland

2 protected from Google?

3 A. The use of Incognito mode does not
4 afford you any additional protections from
5 Google or third parties when using the
6 internet.

7 Q. What kind of protections are you
8 referring to?

9 A. For example, there is no change to
10 tracking behavior, there is no change to
11 server logging or server log retention policy
12 because the server is not aware you are in
13 Incognito mode. It just treats you as if you
14 were a new user. There is no special
15 treatments on the web server for Incognito
16 users.

17 Q. What do you mean by tracking?

18 A. On the internet, there are various
19 tracking technologies employed to measure the
20 performance of advertising. Google has its
21 own ad tech division, product area team, so
22 because they cannot be aware of the Incognito
23 intent, they cannot behave differently for an
24 Incognito user versus a regular mode user.

25 Q. By that, by they cannot behave

1 R. McClelland
2 differently, do you mean that Google does not
3 stop tracking users who are in Incognito
4 mode?

5 MS. CRAWFORD: Objection.

6 A. That is right. The tracking
7 continues, albeit in an isolated session, so
8 the user has Incognito mode affords the user
9 segmentation of their tracking, their
10 browsing activity and tracking, so that any
11 browsing activity or searches undertaken in
12 Incognito mode are not associated with their
13 primary browsing activity, but the tracking
14 does continue, yes, it is session-based
15 tracking, the tracking continues for the
16 duration of the Incognito session.

17 At the end of the Incognito
18 session, locally everything is deleted from
19 the user's computer, but the web server,
20 because it didn't know it has an Incognito
21 user, has no way of knowing that that user
22 cannot ever come back again, but that user
23 will never be seen again from the web
24 server's point of view.

25 Q. Earlier, you testified there is no

1 R. McClelland

2 change to server logging or server log
3 retention policy.

4 Do you recall that?

5 A. I do, yes.

6 Q. What did you mean by server
7 logging?

8 A. Most servers, Google or otherwise,
9 when you visit their website, records certain
10 data around that visit. Typically, the IP
11 address, the time and date, the pages you
12 visit, amongst many other things.

13 That happens in regular mode
14 browsing, as well as in Incognito mode
15 because the web server is not aware of the
16 user being in Incognito mode, it cannot treat
17 that user in any different way, so,
18 therefore, logging happens as usual.

19 Q. What did you mean by server log
20 retention?

21 A. Server log retention refers to how
22 long logs are kept on the server before they
23 are deleted.

24 Q. Is it correct to say that this icon
25 was meant to convey that users who are in

1 R. McClelland

2 Incognito mode are not protected from
3 Google's server logging?

4 MS. CRAWFORD: Objection.

5 A. Yes, basically, that is right. The
6 intent was broader than just Google, but it's
7 important to communicate to the user that
8 it's all web services.

9 Q. Do you recall the study we looked
10 at earlier that said disclosures to be
11 difficult to ignore in order to clear up
12 misconceptions?

13 MS. CRAWFORD: Objection, misstates
14 the document.

15 A. I do, yes.

16 Q. Is this proposal for the use of
17 iconography to show the limits of Incognito
18 protection, an effort to create a disclosure
19 that is difficult to ignore, to clear up
20 misconceptions about Incognito mode?

21 MS. CRAWFORD: Objection, insofar
22 as you're misquoting the document or
23 mischaracterizing the witness'
24 testimony.

25 Q. You can answer.

1 R. McClelland

2 A. It is intended to present it in a
3 format that is more accessible to a broader
4 audience, but not to change the fundamental
5 message.

6 Q. What you do you mean by more
7 accessible?

8 A. It is intent to simplify the
9 language use and to use imagery in lieu of
10 text, so that it could be understood by a
11 broader range of users.

12 Q. This proposal sought to address the
13 misconception that Incognito mode hides
14 browsing history from Google?

15 MS. CRAWFORD: Objection.

16 A. That is right. It is intended to
17 help a broader range of users understand that
18 limitation.

19 Q. Did Google ever implement this
20 proposal for the use of iconography to show
21 Chrome Incognito users that they are not
22 protected from Google when in Chrome
23 Incognito mode in certain instances?

24 MS. CRAWFORD: Objection, misstates
25 the witness' testimony, calls for

1 R. McClelland

2 speculation.

3 A. The change was never implemented
4 during my tenure at Google and I don't
5 believe any changes have happened since
6 either.

7 Q. Can you identify anyone at Google
8 who supported this Incognito change to inform
9 users they are not protected from Google?

10 MS. CRAWFORD: Objection.

11 A. Yes, I could. There are many
12 people who would have supported this.

13 Q. Please name them.

14 A. The first name that comes to mind
15 is the engineering lead for the Incognito
16 team, Ramin Halavati from memory, I struggle
17 slightly.

18 Q. Anyone else?

19 A. Martin Sramek. Again, a lead
20 engineer on a different team privacy team,
21 Chrome browser privacy team.

22 Any member of the privacy
23 engineering teams would have supported this
24 site. I don't remember there being any
25 dissent on this particular topic.

1 R. McClelland

2 Q. Do you remember who did not support
3 this Incognito change?

4 MS. CRAWFORD: Objection.

5 A. I do, yes. There were concerns
6 within an internal counsel around how this
7 change was happening after this particular
8 lawsuit had started and there were concerns
9 that --

10 MS. CRAWFORD: Sorry, I do need to
11 object. It's unclear to me whether or
12 not this testimony is treading on to
13 privileged grounds, insofar as I just
14 heard the witness say conversations were
15 had with counsel.

16 So, Mr. McClelland, I'm going to
17 ask that if Ms. Baeza's question does
18 contemplate conversations that you had
19 with Google legal, including product
20 counsel, that you make it clear that
21 that's what the question calls for, so
22 that I can object and instruct you not
23 to answer on the basis of privilege.

24 It seems as though that is what
25 this question called for, in which case,

1 R. McClelland

2 I do ask that you refrain from
3 disclosing any privileged conversations
4 you had with counsel.

5 Q. I want to add, I'm not asking about
6 communications you had with counsel. I'm
7 just trying to understand who opposed this
8 Incognito change.

9 A. There was no real opposition to
10 this change otherwise.

11 Q. But there were people within Google
12 who did not support the change, isn't that
13 correct?

14 MS. CRAWFORD: Objection.

15 A. Yeah.

16 Q. Who are those people?

17 MS. CRAWFORD: Asked and answered.

18 THE WITNESS: May I answer that
19 question, Jomaire?

20 MS. CRAWFORD: Yes, insofar as you
21 are not disclosing the contents of any
22 conversations.

23 A. It was Google internal product
24 counsel.

25 Q. Google internal product counsel?

1 R. McClelland

2 A. Yes.

3 Q. Who was on the Google product
4 council?

5 MS. CRAWFORD: Objection.

6 A. It was legal counsel, not a group
7 of people.

8 MS. BAEZA: I think we have been
9 going about an hour. If you want to
10 take a quick break, we can do so,
11 otherwise, I can keep going.

12 THE WITNESS: I'm happy to keep
13 going, but if anyone else wants a break,
14 it's not only me.

15 MS. BAEZA: Vanessa, can you
16 introduce the next exhibit?

17 I will mark this as Exhibit 5.

18 (Exhibit 5, documents bearing Bates
19 stamp No. GOOG-CABR-00141578 and
20 GOOG-CABR-00141579, marked for
21 identification.)

22 Q. Exhibit 5 is a document Google
23 produced with production Nos.

24 GOOG-CABR-00141578 to page ending in 579.

25 Let me know when you can see it.

1 R. McClelland

2 A. I see it.

3 Q. Google counsel has represented that
4 this document is the hyperlink in a document
5 called Chrome Sin Rastro one-pager. We will
6 review that exhibit later. I just want to
7 make that representation to you.

8 Please take a moment to look at the
9 document.

10 MS. CRAWFORD: Does the witness
11 have the ability to manipulate this
12 document on his own?

13 I ask because, obviously, this is a
14 multipage document, unlike the prior
15 exhibits we were reviewing, and so it
16 may be helpful for him to, as he's
17 reviewing it, control and scroll at his
18 discretion.

19 MS. BAEZA: Thanks, Jomaire.

20 Q. Mr. McClelland, you can -- if you
21 go to the exhibit share link, you are able to
22 see the document and control it yourself.

23 A. The exhibit share link is in the
24 Chat, is it?

25 Q. I don't think it's in the Chat. I

1 R. McClelland

2 think you should have received it from your
3 counsel?

4 THE EXHIBIT TECH: I can share a
5 fresh link in the Chat.

6 MS. BAEZA: Thank you.

7 A. Which document am I looking at?

8 Q. This is what has been marked as
9 Exhibit 5.

10 A. I found it. Thank you. Reviewing
11 now.

12 Q. Please let me know when you are
13 done.

14 A. Okay. I'm ready. Thank you.

15 Q. Do you see at the top of the page
16 where it says, Motivation, and it says,
17 Leaning into two Google-wide OKRs?

18 A. I do, yes.

19 Q. The first bullet point says,
20 Increase the helpfulness and cohesiveness of
21 our products across Google and the second
22 says, Deliver leading industry privacy,
23 safety, security and reliability to our users
24 and customers.

25 Did I read that correctly?

1 R. McClelland

2 A. You did, yes.

3 Q. The next paragraph, in the second
4 sentence, it says, We would like to make the
5 Incognito experience coherent and simple
6 across the products as is possible, in
7 addition to offering the user more powerful
8 controls over the persistence of their
9 server-side data.

10 Do you see that?

11 A. I do, yes.

12 Q. What understanding, if any, do you
13 have regarding that reference to controls?

14 A. I'm sorry, I don't understand the
15 reference to controls in this context -- I do
16 understand, sorry, my misunderstanding.

17 This was part of a broader
18 Google-wide initiative to roll out Incognito
19 mode to more products.

20 So the controls being referred to
21 here are the ability to enable Incognito mode
22 in additional Google products, such as
23 YouTube and Maps.

24 Q. What do you understand the
25 reference to offering the users more powerful

1 R. McClelland

2 controls over the persistence of their
3 server-side data to mean?

4 MS. CRAWFORD: Asked and answered.

5 Q. You can answer.

6 A. For the visibility of Maps and
7 YouTube to go in Incognito mode and,
8 therefore, watch videos or search for things
9 and have that data on the server removed more
10 quickly than it would have been in regular
11 mode.

12 Q. What about in the context of Chrome
13 Incognito mode?

14 A. Chrome was excluded at this stage.
15 This initiative was subsequent to the one we
16 were looking at previously. That's the one
17 to allow the user to signal their Incognito
18 intent to Google web services, that had, as
19 we discussed, that had been escalated and
20 rejected and this was then, how do we move
21 forward and where are we able to offer users
22 this level of protection.

23 So this particular document is
24 referring to Google native apps, particularly
25 on Android, Maps that Google general search

1 R. McClelland

2 application, as its referred to, and YouTube,
3 from memory. So to be clear, it doesn't
4 include Chrome browser.

5 Q. So there was no proposal to offer
6 anymore powerful controls over the
7 persistence of user server-side data in
8 Chrome Incognito mode?

9 A. That's right. This proposal did
10 not include that.

11 Q. What does server-side data mean?

12 A. It's another way of talking about
13 the logs that the servers keep, so anything
14 that is stored by the web server when you
15 access content on it that relate to your
16 browsing or your usage activity.

17 Q. Do you understand that to mean data
18 that Google collects from users who are in
19 Incognito mode?

20 MS. CRAWFORD: Objection, vague as
21 to data collected from users.

22 A. Are you referring to Chrome browser
23 now or to applications like Maps and YouTube?

24 Q. Both.

25 A. In Maps and YouTube, the intent was

1 R. McClelland

2 (Exhibit 8, documents bearing Bates
3 stamp No. GOOG-CABR-04734899 through
4 GOOG-CABR-04734902, marked for
5 identification.)

6 A. Looking at it now.

7 Okay. I have reviewed it.

8 MS. CRAWFORD: Before you begin
9 your questions about this document, I
10 would just like to note for the record
11 and the witness that the email chain
12 presented includes at least five
13 portions of text that have been marked
14 as redacted and subject to
15 attorney/client privilege. Those pages
16 appear at the Bates number ending in 900
17 and 901.

18 Mr. McClelland, I just ask that if
19 counsel asks any questions that you
20 think might cause you to reveal the
21 substance of privileged communications
22 in this chain or otherwise, that you
23 please flag that before responding.

24 THE WITNESS: Understood.

25 Q. I'm not trying to go into any

1 R. McClelland

2 conversations you had with counsel.

3 Do you see the subject line where
4 it says the DNT header?

5 A. I do, yes.

6 Q. If you know, what is a DNT header?

7 A. DNT stands for do not track. It's
8 an option in Chrome and other browsers that
9 allows users to send a signal to the web
10 server requesting that they are not tracked.

11 Q. Does this include Chrome Incognito
12 mode?

13 MS. CRAWFORD: Objection.

14 A. It includes Chrome, the same DNT is
15 sent regardless of Incognito mode or
16 otherwise, I believe, from memory. There is
17 no distinct setting for Incognito mode.

18 Q. So it would include Chrome
19 Incognito sessions because they are on Chrome
20 browsers?

21 A. If it's by default, off, from
22 memory, if the user has turned it on in
23 regular mode Chrome, then it is sent in
24 regular Chrome mode and also in Incognito
25 mode. If it's off, it is sent in neither.

1 R. McClelland

2 That's my memory of how it works.

3 Q. Can you explain how the DNT header
4 functions?

5 MS. CRAWFORD: Objection,
6 overbroad.

7 You can answer.

8 A. It sends a simple signal to the web
9 server that the user requested in their
10 settings not to be tracked and relies upon
11 the web server to honor that request.

12 Q. Does this include Google web
13 servers?

14 A. All web servers, Google or
15 otherwise.

16 Q. Please go to the page ending in
17 900, halfway through the document, there is
18 an email from you dated February 18th.

19 A. I see it.

20 Q. You wrote, Sorry to be persistent
21 here, but would it be a complete non-starter
22 to reopen the conversation around whether we
23 should respect it?

24 What were you referring to by
25 respect it?

1 R. McClelland

2 A. The do not track header signal.

3 Q. It says, Given all the scrutiny at
4 the moment, it would be a really good privacy
5 story. Ruling out [REDACTED] changes whilst
6 continuing to ignore an explicit user
7 statement as the DNT header is really giving
8 mixed messages to both users and the press.
9 If we really are serious about respecting
10 users' choices, then respecting this flag
11 seems a bare minimum.

12 Do you see that?

13 A. I do, yes.

14 Q. Was the conversation that you
15 wanted to reopen, a conversation about Google
16 respecting the DNT header?

17 A. That is right.

18 Q. Can you explain in more detail that
19 conversation?

20 MS. CRAWFORD: Objection, vague and
21 overbroad.

22 A. It's a long conversation that
23 predates my time at Google. The do not track
24 setting header was naive. All browsers added
25 it and it relied up the web server Google or

1 R. McClelland

2 otherwise to observe and honor that user's
3 request.

4 Very rapidly, I can't give more
5 precise than that, but, pretty quickly, it
6 transpired that most ad tech companies were
7 not observing that, were not honoring that
8 user request and were just ignoring it.

9 Then -- and I'm not entirely sure
10 of the timelines. As I said, it was prior to
11 my time at Google and prior to me becoming a
12 specialist in this, but at some point in
13 time, Microsoft made the decision that they
14 would send do not track through for every
15 single user, at which point the value of that
16 header was negated in that it was no longer
17 an assertive expression from the user. It
18 was one that Microsoft had determined for
19 them. It also meant that there was a large
20 proportion of the web sending this signal,
21 which would have had revenue impacts for all
22 ad tech companies.

23 My understanding of how that story
24 played out, and, again, this is prior to my
25 time, was that Google observed that signal

1 R. McClelland
2 for a while through ads, observed that signal
3 for a while, but it got to a point where they
4 were -- they perceived they were at a
5 competitive disadvantage compared to the
6 competition and at that point in time, a
7 decision was made to no longer observe it.
8 The conversation here was, should we revisit
9 that decision.

10 To be clear though, all of this is
11 prior to my time and it is information that I
12 have gained through having conversations with
13 other people, rather than being first party.

14 Q. Do you have an idea, more or less,
15 of when Google began having conversations
16 about whether to respect the DNT header?

17 MS. CRAWFORD: Objection, calls for
18 speculation.

19 A. I don't know, but my understanding
20 was that initially, it was respected, so from
21 the beginning, it was respected and then, at
22 a point in time, they decided not to.

23 Q. What do you mean by, decided not to
24 respect it?

25 A. They would no longer honor that

1 R. McClelland

2 intent of the user, they would ignore the
3 signal.

4 Q. What does it mean for Google to
5 ignore the signal?

6 A. I don't know the specifics of what
7 that would mean, but it would mean that a
8 user who was signaling do not track true,
9 would be treated the same as a user who was
10 signaling do not track false.

11 Q. Can you explain to me the
12 difference between a do not track signal
13 that's true and a do not track false?

14 A. I can. True means that the user
15 has ticked the check box saying, do not
16 track, and false would be where the user has
17 not ticked the check box, do not track.

18 Q. So if a user checks the do not
19 track true, Google made a decision not to
20 honor that signal?

21 A. That is my understanding.

22 MS. CRAWFORD: Objection, misstates
23 the witness' testimony, calls for
24 speculation, vague and overbroad as to
25 time.

1 R. McClelland

2 Q. Why do you think that reopening the
3 conversation about the do not track header
4 was a non-starter?

5 MS. CRAWFORD: Objection, misstates
6 the witness' testimony and
7 mischaracterizes the document.

8 A. It wasn't my opinion that it was a
9 non-starter. I was being informed other
10 people thought it to be a non-starter,
11 speculation, but I think it was because
12 Microsoft was sending it for all users,
13 regardless of their desire, thus devaluing it
14 as a user statement. It was more indicative
15 of a browser choice than a user preference.

16 Q. Do you know who had the opinion
17 that it was a non-starter?

18 A. No, I don't, sorry.

19 Q. When you say that Microsoft was
20 sending it for all users, regardless of their
21 desire, does that mean that Microsoft was
22 honoring -- strike that.

23 When you said that Microsoft was
24 sending it for all users, regardless of their
25 desire, does that mean that Microsoft was

1 R. McClelland

2 sending a do not track true signal for
3 everybody by default?

4 A. That is right.

5 Q. So Microsoft, by default, was not
6 tracking users?

7 A. I don't know. That is a different
8 question. Whether Microsoft was observing it
9 or not, I don't know.

10 The intent there is that
11 Microsoft's Internet Explorer, in those days,
12 was sending it by default, whether Microsoft
13 observed it on the server side, I don't know.

14 Q. Google was not sending the signals
15 by default, is that fair?

16 A. Correct, it was off by default in
17 Google Chrome.

18 Q. Even if a user opted to send the
19 signal as do not track true, Google was not
20 honoring that signal, correct?

21 MS. CRAWFORD: Objection, misstates
22 the witness' testimony, vague and
23 overbroad.

24 A. My understanding, from what I
25 learned from other people, was that

1 R. McClelland

2 initially, Google was respecting that, but at
3 a point in time, that decision was reverted
4 and from then on, they no longer were.

5 Q. During your time at Google, was
6 Google respecting do not track signals that
7 were true?

8 A. I don't know when the change was
9 made. I don't know if that was during my
10 tenure or prior to it, but at some point
11 during my tenure, they were not respecting
12 it.

13 Q. Do you know why Google closed the
14 conversation it was having about the do not
15 track pattern?

16 A. I don't know why. Again, I think
17 that was prior to my time.

18 Q. You mentioned that there may have
19 been anti-competitive issues.

20 What were you referring to?

21 MS. CRAWFORD: Objection, and going
22 to caution the witness not to reveal any
23 information reflecting conversations
24 from or information obtained from
25 speaking with counsel or other Google

1 R. McClelland

2 in-house counsel.

3 A. Can you direct me to the phrase you
4 are referring to, please?

5 Q. Earlier, you mentioned something
6 about competition issues with the do not
7 track pattern.

8 Do you recall that?

9 A. I do. I know what you are
10 referring to, yes.

11 Q. What did you mean by that?

12 A. The Google -- my understanding was
13 that the Google Ads team were happy to
14 observe that signal whilst the majority of
15 their competition were doing the same, but it
16 had got to a point where they were being put
17 in, in their own eyes, at a competitive
18 disadvantage by being the only ones who did
19 observe it and that was their motivation for
20 reverting. Again, what I heard through other
21 people, not first party conversations.

22 Q. How would there be a competitive
23 disadvantage to observing the signal?

24 A. Revenue is made through tracking
25 users and, therefore, driving the ability to

1 R. McClelland

2 serve the targeted advertising without the
3 ability to target advertising to users. The
4 revenue per user is lower.

5 A user who requests not to be
6 tracked cannot be served targeted advertising
7 and, therefore, is a less valuable user to
8 the ad tech company.

9 Q. So honoring a do not track true
10 signal would have hurt Google's revenues?

11 MS. CRAWFORD: Objection, insofar
12 as that calls for speculation.

13 A. That is my understanding, yes.

14 Q. Where it says, Rolling out
15 [REDACTED] changes while continuing to ignore
16 an explicit user statement as a DNT header is
17 really giving mixed messages to both users
18 and the press.

19 Do you see that?

20 A. I do, yes.

21 Q. What did you mean by ignore
22 explicit user statement as a DNT?

23 A. Do not track within Chrome is a
24 option the user has to manually enable, so to
25 that extent, it is an explicit desire from

1 R. McClelland

2 the user, the desire not to be tracked.

3 Q. So Google was ignoring an explicit
4 user statement?

5 MS. CRAWFORD: Objection. Sorry,
6 go ahead, Rosie.

7 Q. So Google was ignoring user
8 requests that were explicit to honor a do not
9 track true signal?

10 MS. CRAWFORD: Objection, misstates
11 the document.

12 A. Whether that signal was coming from
13 a Chrome browser, Google was not observing
14 it. Where it were coming from an internet
15 Explorer, it could be argued it was not an
16 explicit user statement.

17 Q. How is rolling out [REDACTED]
18 changes while ignoring the DNT header
19 creating a mixed message to users?

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Page 134

1 R. McClelland

2 [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 So this was Google trying to wean,
6 trying to move away from using third party
7 cookies in lieu of signed-in users, but it
8 had to also move the entire web ecosystem,
9 not just itself, so it was a complex change
10 program that had to incentivize web
11 developers to move to this new technique,
12 whilst at the same time, gradually devaluing
13 the use of the third party cookie as a
14 motivator to make that change.

15 So [REDACTED] -- Google was doing a
16 lot of work to try to sell this way forward
17 internally, but also to other browsers and to
18 other members of the web ecosystem, meaning,
19 publishers and content creators and was
20 trying to be seen to be leading the
21 conversation on the need to move away from
22 third party cookies for reasons of privacy
23 and the concern here was that whilst we are
24 doing that, if we are also and concurrently
25 ignoring this signal, this do not track

1 R. McClelland

2 A. It's Melissa. She is a software
3 engineer on the Chrome privacy team.

4 Q. Her last name is Galonsky?

5 A. Yes, that's right.

6 Q. Do you see it says, There should be
7 separate Zwieback cookies between Incognito
8 sessions, but they could be joinable on a
9 technical level?

10 A. I see it, yes.

11 Q. If you know, how can separate
12 Zwieback cookies between Incognito sessions
13 be joinable?

14 MS. CRAWFORD: Objection, insofar
15 as the question calls for speculation.

16 A. It could be joinable by looking at
17 information in the cookie, for example, the
18 IP address. If there is enough information,
19 similar conversations to fingerprinting this
20 morning. If there is sufficient information,
21 then they become joinable, if you wanted to
22 do so.

23 Q. Could it be joinable by Google?

24 A. Google or anyone else.

25 MS. BAEZA: We can take this

1 R. McClelland

2 exhibit down and I will go back to

3 Exhibit 15 because I have time.

4 Q. Exhibit 15 is an email produced by

5 Google with production Nos.

6 GOOG-CABR-05256755 through page ending in

7 760.

8 Please let me know when you have

9 that in front of you.

10 (Exhibit 15, documents bearing

11 Bates stamp No. GOOG-CABR-05256755

12 through GOOG-CABR-05256760, marked for

13 identification.)

14 A. Can you repeat the page number

15 again, please?

16 Q. I am focusing on the page ending in

17 758. If you would like to go a little higher

18 and to read the email starting with -- the

19 email from Mark Pearson to get more context,

20 please go ahead and do so.

21 A. Thank you.

22 MS. CRAWFORD: Is that the page

23 ending in 759?

24 Q. However you want to proceed, Mr.

25 McClelland.

1 R. McClelland

2 A. I'm reading from the M. Pearson
3 email on 755 now.

4 Okay. I have the general gist.

5 Q. Please go to the page ending in
6 758. You will see it's an email from you,
7 starts at the bottom of page. It says,
8 Thanks, Mark.

9 A. Yeah, I see it.

10 Q. If you go to the next page, it
11 says, I'd also point out, we already consider
12 it possible for Google to join regular and
13 Incognito sessions, so the promise not to do
14 this is effectively already being applied.
15 The GWS ID's approach would just make this
16 easier and more reliable.

17 A. Uh-huh.

18 Q. Where it says the GWS ID's approach
19 would just make this easier and more
20 reliable, what were you referring to?

21 A. There was a desire to be able to
22 run experiments in Incognito mode and in
23 order for us to better understand what users
24 were using and to evaluate new features in
25 order to improve the product prior to this

1 R. McClelland

2 exchange, we were not able to do that within
3 Incognito mode for risk of making more
4 joinable with regular sessions, so we were
5 proposing different ways through which we
6 could run a limited number of experiments in
7 Incognito mode and what the right level of
8 balance was between our need as a product
9 team to understand usage of our feature with
10 respecting the privacy needs of users who
11 are, by definition, in an elevated state of
12 privacy in Incognito mode.

13 Q. Where it says, we already consider
14 it possible for Google to join regular and
15 Incognito sessions, who were you referring to
16 when you said, we?

17 A. The Google Chrome privacy team.

18 Q. Do you still agree with the
19 statement, it's possible for Google to join
20 regular and Incognito sessions?

21 MS. CRAWFORD: Objection.

22 A. As far as I know, assuming nothing
23 has changed, then, yes, it should still be
24 possible.

25 MS. BAEZA: Thank you. I have no

1 R. McClelland

2 more questions at this time.

3 Do you want to go off the record,
4 Jomaire.

5 THE EXHIBIT TECH: The time is
6 9:46. We are off the record.

7 (Off the record.)

8 THE EXHIBIT TECH: Recording has
9 resumed. The time is 10:07 a.m. and we
10 are back on the record.

11 EXAMINATION BY

12 MS. CRAWFORD:

13 Q. Good afternoon, Mr. McClelland.
14 I'm counsel for Google. I'm going to be
15 asking you a couple of questions following up
16 on the examination that was led by Ms. Baeza
17 for plaintiffs' counsel in the Brown action.

18 Do you recall when Ms. Baeza asked
19 you about your educational background and
20 employment history?

21 A. I do, yes.

22 Q. Did you hold any jobs -- have you
23 held any jobs that were not covered during
24 your discussion?

25 A. Yes, plenty.

1 R. McClelland

2 Q. Are these all jobs that sort of
3 postdate your undergraduate degree?

4 A. Yes, some of them.

5 Q. Do you mind listing out for me the
6 different places where you worked prior to
7 your employment at Google?

8 A. Certainly. I worked in Japan for
9 three years teaching English with the
10 Japanese government. I did my master's. I
11 went to London, I worked for a company called
12 Via doing enterprise class digital asset
13 management. Through acquisition, they became
14 North Plains, which is when I became product
15 manager. I moved to a different company
16 called Constant Commerce, who were an ad tech
17 type of organization, very small one. I
18 moved out to Germany, to Berlin, to work for
19 Babble, a language learning consumer. I then
20 moved to Google.

21 Q. I believe you testified that you
22 worked at Google from about August 2018 to
23 March 2021.

24 Does that sound about right?

25 A. That sounds about right.

1 R. McClelland

2 A. Yes, you are right, there are
3 things that only Google is aware of,
4 including Chrome itself, that other third
5 parties would not be aware of.

6 Q. Those things include Chrome UMA
7 signals and absence of the X-Client Data
8 Header?

9 A. Yes, that's correct.

10 Q. Do you remember testifying about
11 ChromeGuard and testing for ChromeGuard?

12 A. I do, yes.

13 Q. If ChromeGuard was meant to be a
14 more privacy-enhancing feature, why did
15 Google test it in 2020 with one version
16 defaulted on and one version defaulted off?

17 A. It was more about understanding how
18 users perceived that feature and whether they
19 felt it generally useful. We wanted to gain
20 insight into what percentage of people
21 decided to turn it off when we put it on by
22 default and, conversely, if it were off by
23 default, what percentage would turn it on.
24 We wanted to get a sense of how users
25 perceived that feature and whether they saw

1 R. McClelland

2 value in it.

3 Q. Earlier you were asked some
4 questions about Google logging.

5 Do you recall that?

6 MS. CRAWFORD: Objection to the
7 form of the question.

8 A. Can you be more specific, which
9 particular one?

10 Q. Sure. Earlier you testified about
11 Google logging data on their servers?

12 A. Yes, I do remember.

13 Q. You would agree that users
14 generally have no practical way of avoiding
15 Google from logging them on the internet,
16 correct, identified or not?

17 MS. CRAWFORD: Objection, vague and
18 overbroad as to identifying them on the
19 internet and no practical way of
20 avoiding Google.

21 Q. You can answer.

22 A. It is difficult, but not
23 impossible.

24 Q. Google logs Incognito and
25 non-Incognito activities of users, correct?

1 R. McClelland

2 A. That is right, yes.

3 Q. And users have no way of preventing
4 Google from logging their Incognito activity,
5 correct?

6 MS. CRAWFORD: Objection as to
7 Incognito activity and to the term,
8 logging.

9 Q. I will qualify that. By logging on
10 Google's servers?

11 A. Thank you. That helps. Yes, there
12 is no way that users can prevent that.

13 Q. Earlier you testified about Google
14 profiles.

15 Do you remember that?

16 A. I do, yes.

17 Q. Counsel asked you questions about
18 profiles in connection with authenticated and
19 unauthenticated data.

20 A. I do, I remember.

21 Q. So you agree that users have two
22 profiles, correct?

23 MS. CRAWFORD: Objection, assumes
24 facts, vague and ambiguous as to the
25 word, users, in this context.

1 R. McClelland

2 A. It's a simplification. Users
3 typically have one or two primary profiles,
4 perhaps a personal one and a work one and
5 then, depending upon how frequently and if
6 they use Incognito, they may have multiple
7 orphaned Incognito sessions.

8 With each new Incognito session,
9 there is a new profile.

10 Q. There is a profile for
11 authenticated data and a different profile
12 for unauthenticated data?

13 A. There is one profile for
14 authenticated data and potentially many
15 separate profiles for unauthenticated data.

16 Q. You agree that a user can control
17 much of their authenticated data from My
18 Account, in My Google Account?

19 MS. CRAWFORD: Objection, misstates
20 the evidence. You might mean my
21 activity.

22 Q. You can answer.

23 A. Yes, I believe that that page, I
24 agree that that page in the My Accounts
25 section gives the user controls over Google's